

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: AQUEOUS FILM-FORMING) MDL NO: 2:18-MN-2873
FOAMS PRODUCTS LIABILITY)
LITIGATION) July 26, 2019

TRANSCRIPT OF STATUS CONFERENCE

BEFORE THE HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE, presiding

A P P E A R A N C E S:

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MICHAEL LONDON, ESQ.
SCOTT SUMMY, ESQ.
PAUL NAPOLI, ESQ.
MATTHEW EDLING, ESQ.
KEVIN HANNON, ESQ.
ALAN KNARF, ESQ.
MIHIR DESAI, ESQ.
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JOSH COHAN, ESQ.
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LOUISE R. CARO, ESQ.
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CHRISTIAN MARCUM, ESQ.
NANCY CHRISTENSEN, ESQ.
DAVID McDIVITT, ESQ.
DAVID HOYLE, ESQ.
REBECCA NEWMAN, ESQ.
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1 Friday, July 26, 2019

2 (WHEREUPON, court was called to order at 9:03 a.m.)

3 **THE COURT:** Good morning. Please be seated. If
4 it appears that my papers are getting larger when I walk
5 in, it is correct. Y'all are keeping me occupied very
6 effectively.

7 Well, I have reports from all over town that
8 y'all are eating well. I get it everywhere people go,
9 they say they've seen, quote, my lawyers. And let me say,
10 the restaurateurs are thrilled.

11 Okay. We're in the matter of the -- our monthly
12 status conference for July of the AFFF MDL. Counsel who
13 will be speaking today, could they identify themselves for
14 the record, please?

15 **MR. THOMPSON:** Your Honor, my name's Fred
16 Thompson, and I'm plaintiff's liaison.

17 **MR. LONDON:** Good morning, Your Honor, Michael
18 London.

19 **MR. SUMMY:** Good morning, Your Honor, Scott
20 Summy.

21 **MR. NAPOLI:** Good morning, Your Honor, Paul
22 Napoli.

23 **MR. PETROSINELLI:** Good morning, Your Honor, Joe
24 Petrosinelli. I see where I'm grossly outnumbered this
25 morning.

1 THE COURT: You are. You are.

2 MR. PETROSINELLI: I'll give it my best shot.

3 THE COURT: Just throw Dukes out in front of
4 you.

5 MR. DUKES: Good morning, Your Honor, David
6 Dukes.

7 THE COURT: Yes.

8 MR. OLSEN: Good morning, Your Honor, Mike
9 Olsen.

10 THE COURT: Yes.

11 MR. DUFFY: Good morning, Brian Duffy.

12 THE COURT: Okay.

13 MR. RING: Good morning, Your Honor, Dan Ring.

14 THE COURT: Thank you.

15 MS. FALK: Good morning, Your Honor, Christina
16 Falk.

17 THE COURT: Good morning. And Ms. Williams is
18 thrilled to be out of here, I suspect. So I've never seen
19 someone so happy in my life. It's good to have you.

20 Okay. Folks, let me -- I've got a list of
21 issues that I want to raise or which I understand you want
22 to raise. I might confess, then, some of them I might not
23 fully appreciate each party's position and why they're
24 asserting it so you'll need to help me a little bit.

25 Let me just as a -- as a opening sort of

1 understanding of my approach to issues of discovery and
2 MDL, it is very different than an individual case
3 discovery. It's just very different. We right now have
4 110 cases. If I'm reading the tea leaves right, there are
5 a lot more coming. And they are among the most complex
6 environmental cases, any one of them, pending in the
7 country. It was a very wise decision of the MDL panel to
8 consolidate them. It's a tremendous amount of efficiency
9 for all parties.

10 But, you know, the changes in the federal rules
11 a couple years ago regarding discovery had a major focus
12 on proportionality. What is at issue? And what is the
13 cost? And it's very much of a cost-benefit analysis. And
14 we had -- because we had cases with relatively little at
15 stake in which defendants were basically being bullied
16 into resolution by the costs of discovery, it was
17 something we heard a lot about. It was a reasonable
18 resolution. And I've seen a lot of progress since then.

19 And in MDL, that calculation really tips towards
20 broad discovery, I'm just going to tell you that. I --
21 you'll hear me from time to time talk about my Lipitor
22 experience, because it's the only other one I had, and a
23 complex, very large MDL. I learned a lot. I think
24 counsel involved there learned a lot. I insisted on
25 robust discovery. The defense counsel were, I think,

1 biting through nails they were so mad at me. They later
2 thanked me for that, okay? Because when they went up on
3 appeal, the appeal was not about being denied access.

4 So -- and the issues here invite broad
5 discovery. Look at the claims. I don't have any idea if
6 they have any merit to them. But if they are the proof,
7 or their claim, they're going to need access to
8 information that dates over a half century, right? And
9 the defense of governmental contract immunity raises some
10 of the same factual issues.

11 So these issues are going to require a great
12 deal of discovery. Much of it -- you know, we have, of
13 course, debates over keywords and all this stuff for word
14 searches. Well, what if, you know, we're pre -- when
15 we're talking about -- pre-emails, right? We're talking
16 about getting corporate documents that go back prior to
17 that time. I -- hopefully, some of the defendants have
18 digitalized those and will help search them. But this is
19 going to be -- this is going -- this is going to be a
20 heavy burden on defendants. I'm just going to say that to
21 you right now. And it's a -- it's a necessity. But
22 imagine the alternative of being in 110 different places
23 doing this and having 110 different judges insisting on
24 you and maybe 30 different lawyers litigating each of
25 their own ideas about what discovery is necessary.

1 So I want you to understand that ideas about,
2 you know, we ought to put, you know, right now these
3 strict limits on interrogatories and requests to produce,
4 I'm not -- I'm not interested in that. The normal 25 rule
5 makes no sense in this case. And I've made that clear.

6 On the other hand, this is not let's imagine the
7 craziest question we can ask defendants. And let's see
8 how long we can tie them up looking for it. That's not
9 going to go either. So I urge the plaintiffs, don't,
10 don't abuse my goodwill here. Be serious.

11 And where requests are made that would require a
12 great deal of effort to retrieve that information, if the
13 defendants are aware of a shortcut how you could get
14 essentially the same information, you're supposed to
15 confer, obviously, before you file a protective order
16 motion, offer that to the plaintiff's lawyers. Say,
17 listen, this would be enormously demanding, but how about
18 this as a way to get to the same information?

19 I know there were requests that I approve
20 discovery before it begins. Huh-uh. That went out with
21 demurrers and co-pleading. Okay? We're not doing that.
22 The system which the federal rules adopted is that -- the
23 modern rules are that if the defendants need protection,
24 they file a motion. Don't file them saying there are too
25 many. That is not a -- that is not an objection that's

1 worthwhile.

2 But if there are questions that don't meet the
3 standard under what is it, 15(d) or whatever, you need to
4 come in, and whatever the rule is, tell me that. Okay?
5 Let's talk about it. We're going to be seeing each other
6 every month. If something's more urgent than that, fine.
7 Don't answer a discovery unduly burdensome. Okay? That
8 is not an acceptable answer by itself without a serious
9 factual foundation for it.

10 It'll be a really -- if it's relevant to this
11 claim or your -- one of your defenses, and almost every
12 factual inquiry I suspect will be, don't -- unduly
13 burdensome will not carry a lot of weight. You're getting
14 an incredible efficiency by an MDL. And if it's
15 potentially relevant info -- if this case goes up, I don't
16 want either side to have the issue that they were denied
17 adequate discovery. I want everybody to feel like they
18 got all the information they needed.

19 Now, the timing of discovery may vary because I
20 think there's some strategic ways we need to deal with
21 issues. And I'm going to urge you, to help you, manage
22 you towards focusing on certain issues. I've told you
23 about that before.

24 I think the government contractor immunity issue
25 just has got to be up front. It overlaps with other

1 issues. So I'm not trying to limit you when you're
2 talking to some people. You know, there might be
3 plaintiff claims as well as these defenses, but a lot of
4 them are really similar to each other. What you know, and
5 when you knew it, and who did you warn, and all those
6 issues really are the heart of this case and the heart of
7 the government contractor defense. So there are other
8 issues as well. But I'm just saying, we need to get on
9 with this.

10 I was looking over how much we had actually
11 accomplished. I think the first conference we -- status
12 conference, I think in March maybe? Does that sound
13 right, you guys? And we're now July. We've set up the
14 PEC and the defense committee. We -- the Government has
15 begun, I understand.

16 Thank you, Ms. Williams, for giving robust
17 document production allowing access to the very valuable
18 information of the Department of Defense.

19 The parties have -- are very close on the fact
20 sheets. We'll talk about that in a little while. Y'all
21 have made really great progress. But it is just -- that's
22 easy compared to what we're getting ready to get into
23 right now.

24 And, you know, I guess the best meetings are
25 going to be where everybody leaves mad at me. Okay? I've

1 done everybody -- nobody is going to walk out feeling like
2 somehow they won in front of the judge because everybody's
3 agenda, they have agendas different from mine. Mine is I
4 want a level playing field and robust discovery so that
5 everybody is able to gather the evidence relevant and have
6 a fair determination of the issues. That's my job here.
7 I'm pre -- I'm the pretrial guy, right? We may be
8 bellwethers here, or whatever. Or I may try cases if
9 they're brought in South Carolina. But basically, what
10 I'm doing is pretrial.

11 Okay. With that introduction, let me go through
12 some questions, and I may not end up understanding them
13 correctly. But the first one sort of relates to what I
14 talked about is when must the defendants respond to the
15 defense fact sheet?

16 By the way, I think these defense fact sheets
17 and the plaintiff fact sheets are really important for a
18 lot of reasons I've explained earlier. And I want to get
19 on -- we're going to end today and I'm going to tell you
20 what I'm thinking about the areas y'all disagree. I'm
21 going to give y'all ten days to work it out and then I'm
22 just going to rule. Okay? Whatever the disagree --
23 because I don't think the differences are that big a deal
24 myself. And I think they're really important.

25 I know there's that Question 14 that the

1 defendants were kind of beefing about with what did you
2 ship, and when did you ship it, and where did it go? That
3 is, like, really critical to know. And it may well be
4 they're all going to defense warehouses, defense
5 department warehouses. And we have got to trace that. We
6 need to get that information out. Well, we're going to do
7 that on a defense fact sheet or a first set of
8 interrogatories or requests to produce, I don't really
9 care. But that is, like, really critical.

10 On the other hand, the defendants are entitled
11 to make sure that the individual plaintiffs have an --
12 have a colorable claim. And I don't think that -- I mean,
13 there's not -- very little disagreement. We'll get to
14 what the disagreements are. But the plaintiff fact sheets
15 sort of just give them -- the people say, well, you didn't
16 even live there. Okay? Or you didn't -- you have like no
17 evidence that you have any issues. Well, you know,
18 they're entitled to know that.

19 Now, I am -- you know, I don't want to do
20 individual causation discovery beyond the plaintiff fact
21 sheets right now. I just think they're a big -- we -- you
22 know, you just -- you know, how do you eat an elephant?
23 One bite at a time. You just don't take on the whole
24 thing. And I don't -- I think right now there are other
25 things we need to be focusing on.

1 But I -- we're not going to wait for the
2 plaintiff's fact sheets to be done. We'll work out a time
3 that -- that allows the plaintiff's counsel adequate time
4 to get these forms completed. But they need to get on and
5 the defendants need to get on with -- with completing
6 those fact sheets. And they will help focus other aspects
7 of discovery.

8 So with that, let me hear from defense counsel
9 on the issue of -- of -- of when we think the defense, the
10 defense fact sheets should be completed.

11 **MR. RING:** As reflected in the current draft of
12 the CMO, Your Honor -- and Dan Ring on behalf of DCC and
13 3M. They're -- and this isn't really an area of dispute,
14 although we can certainly talk about it. They're --
15 they're keyed off of whether in our view a -- the first
16 PFS to identify a particular site and then we would
17 respond.

18 **THE COURT:** Well, let -- let me ask -- let me
19 ask you about this. I don't want a gamesmanship over
20 this. I suspect that that the PEC could give you by
21 Monday morning a list of sites that are at issue in the
22 complaints thus filed. Okay? And we need to get -- I
23 don't want -- Mr. Ring, I don't want a gamesmanship about
24 this. There are 401 sites according to the Department of
25 Defense. We don't have 401 cases so not everyone is

1 involved. Some of them may be problems on the -- on
2 installations but not on -- not -- in surrounding
3 communities, there not -- may not be claims. If you need
4 a list, I'll make the plaintiffs give you the list. But I
5 want, I want you to go ahead and get those moving. And I
6 don't want, you know, waiting for the plaintiffs fact --
7 we're not going to wait for the plaintiff's fact sheets,
8 I'll tell you that right now.

9 **MR. RING:** And, Your Honor, actually that was
10 our original proposal, was to try to agree on a list of
11 sites.

12 **THE COURT:** They don't have to agree. Here's
13 what it -- here's what we're going to do.

14 Who wants to speak for the plaintiffs? Okay.
15 Mr. London, let me just say this, can you by one week from
16 today provide a list of all sites which the present cases
17 claim to be contaminated?

18 **MR. LONDON:** Yes, Your Honor, we could. We
19 could endeavor to identify the current cases that, Your
20 Honor --

21 **THE COURT:** Sites now at issue.

22 **MR. LONDON:** Sites now at issue. But, Your
23 Honor, I -- I think -- I don't know if you want to hear
24 our position on it. I -- I think we could run into
25 potential concerns with this approach.

1 **THE COURT:** Because?

2 **MR. LONDON:** Because particularly with
3 individual plaintiffs, there might be multiple sites.

4 **THE COURT:** Well, have you alleged them in the
5 complaint?

6 **MR. LONDON:** Well, Your Honor, they may be
7 alleged in the discovery device, which the complaint is
8 going to make your general allegations, but a plaintiff
9 may have moved to two or three --

10 **THE COURT:** Do your best. You can supplement it
11 later. We don't need to be perfect. I'm trying to get
12 discovery moving. And I want -- I think it's very
13 important to get the sites identified.

14 And listen, if there are more lawsuits, there
15 are going to be more sites, right? I mean, this is not
16 the -- I'm not trying to bind you to this list and no
17 other list.

18 What I'm trying to do is get -- so you can get
19 the information about the sites we know. We know most of
20 them. I mean, there may be a little bit of softness
21 there. But we want to figure out who put their product
22 there, whose product's at issue. The relative
23 responsibility of defendants is important. And I want to
24 get on with it.

25 And this is going to be refined. You know, the

1 whole duty, of course, is to continue to supplement,
2 right? And -- and that will be not only to supplement on
3 the defense side but if you've got additional sites, to
4 supplement your list. And -- but you can, you can go
5 ahead and get started. It's not -- you're not -- it's not
6 tasked in bronze.

7 **MR. LONDON:** Right, Your Honor. Well, we -- we
8 could, as Your Honor indicated, provide -- and I'm not
9 trying to be disruptive or argumentative on this point,
10 Judge, so please don't take it that way. But as framing
11 these two documents, the defense fact sheet, the
12 historical nature of it is in response to a plaintiff fact
13 sheet. And so --

14 **THE COURT:** I -- I don't buy it.

15 **MR. LONDON:** Okay. Let me --

16 **THE COURT:** You're wasting your time. I don't
17 buy --

18 **MR. LONDON:** But, Your Honor, as new cases come
19 in to be filed, and there will be new sites as
20 defendants --

21 **THE COURT:** And you will -- and you will give
22 the defendants notice of that and they will supplement.
23 We're trying to get the ball rolling. This is not the
24 final determination, Mr. London.

25 **MR. LONDON:** Okay.

1 **THE COURT:** This is just to get the ball
2 rolling. And these number of sites, I mean, some of these
3 sites you have, you know, somebody's probably got --
4 you've probably got a message at your office when you get
5 back today about a site you didn't know about that
6 someone's --

7 Mr. Napoli, do you have something else you want
8 to add to that?

9 **MR. NAPOLI:** I do. Because when you talk about
10 the site, it's -- it's -- for example, Colorado Springs.
11 If we say our client was exposed in Colorado Springs, all
12 of our -- our knowledge leads us to believe that the Air
13 Force base is the cause of contamination. What occurred
14 in discovery was the defendants said, That's not the site
15 that caused your client's contamination. It was the
16 industrial site next door where those same products were
17 used in an industrial setting. So I think the fear of
18 Mr. London and I is that if we say a specific site like
19 the Air Force base, we're in the blind and we don't
20 know --

21 **THE COURT:** And then you -- and here's what --
22 you do discovery and you find out there's some other site
23 nearby. And you're going to supplement it. You'll say,
24 Here's notice supplementing my list of August 4, 2019.
25 And you -- and you give them additional ones.

1 **MR. NAPOLI:** But -- but the way it works,
2 unfortunately, Your Honor, and -- and the -- the Air Force
3 base is -- is public information because the Government
4 and Department of Defense is putting out their reports of
5 the remediation of Phase One and Phase Twos of the site.
6 You don't necessarily get that information in an
7 industrial setting. The defendants may have it and we may
8 not know about it. In Colorado --

9 **THE COURT:** And you're going to get discovery
10 because I'm push -- I'm going to push for the requests to
11 produce and you'll -- this is going to be a rolling
12 process, guys. This is not --

13 I'm just trying to get the ball rolling. And I
14 am -- and I'm not going to -- I'm not going to tie one
15 discovery to the other discovery.

16 Give them the list by next Friday. I'll put it
17 in an order, the working list. I'll make it clear it is
18 not the final list.

19 And then how much time do defendants need to get
20 the fact sheets done?

21 **MR. RING:** Well, both sides had agreed for the
22 pending cases for 98 days from the date of your order.

23 **THE COURT:** Sound's biblical. Okay. 98 days?

24 **MR. RING:** Yes.

25 **THE COURT:** Okay.

1 **MR. RING:** That was the product of many
2 back-and-forth negotiations.

3 **THE COURT:** That sounds that way. So -- okay.
4 So we're going to get the lists by next Friday. And
5 98 days later, the defendants will respond. And if
6 there's a problem comes up with getting them completed,
7 y'all let me know that. Okay? Does that make sense?

8 **MR. RING:** Yes, Your Honor.

9 **THE COURT:** Okay. I'm satisfied. Anything
10 else, Mr. Ring?

11 **MR. RING:** Not on that issue.

12 **THE COURT:** Yes, there'll be more, I'm sure.

13 Okay. Let's talk about when the plaintiff fact
14 sheets must be completed. Let me just say, we are -- we
15 are not waiting for answers or motions to dismiss to do
16 plaintiff fact sheets, okay? So again, I'm trying to get
17 the process moving. How long do the plaintiff's counsel
18 need to be able to conduct the appropriate interviews and
19 so forth and get the plaintiff fact sheets completed for
20 those presently parties to this action?

21 **MR. LONDON:** Your Honor, Michael London. For
22 the plaintiffs and defendants presently the -- presently
23 with cases filed, the parties have agreed, and that's not
24 an issue, it's 98 days from --

25 **THE COURT:** There we go. Okay. And then was

1 it -- y'all -- they were talking about 63 days, God only
2 knows where that one came from. Why not the same 98 days?

3 **MR. LONDON:** Your Honor, the -- the difficulty
4 there and where we are not in agreement is the plaintiff's
5 position is that a fact sheet, despite hearing what Your
6 Honor just said, should be due based upon some triggering
7 event, some answer.

8 **THE COURT:** Mr. London, you're wasting your
9 time. I -- I'm -- I think they have a different purpose.
10 We're not triggering off anything. What you do is, it's
11 going to be like one thing is waiting for another thing
12 and we never get anything done. I'm going to set
13 deadlines. I do not view them -- I've looked at them. I
14 don't see any reason right now -- you -- frankly, most of
15 it y'all should have already gotten the information in
16 your intake interviews, okay? And if not, you put a
17 paralegal on the telephone and you can knock them out very
18 quickly. I'm trying to be liberal with you on terms of
19 giving you time to do it. I don't think they're that
20 hard.

21 **MR. LONDON:** I -- I -- well, Your Honor, I -- I
22 appreciate that. But -- and again, that is not -- not --
23 with all due respect, Judge, I know how you did it in
24 Lipitor. There was no trigger event, but that was not the
25 typical model. The typical model is, Your Honor, an

1 answer -- a short-form answer, an abbreviated answer.
2 Some judges have even begun with a notice of appearance, a
3 quasi-answer, something that starts the ball running. The
4 plaintiff --

5 **THE COURT:** Mr. London, you're wasting your
6 time. I'm getting the process moving. We've got to move
7 a battleship here. I don't doubt other judges do things
8 different ways. Everybody will have their own way of
9 doing it. I've -- I understand. I read carefully what
10 y'all were saying. We're getting the plaintiff fact
11 sheets completed. Now, how many days do you need for
12 people who are coming in?

13 **MR. LONDON:** Well, Your -- for people who are
14 coming in, Your Honor -- and I just -- I will say one
15 other point to this. And I understand that it's a
16 battleship moving. But having the deadline before service
17 of process, which is 90 days under the federal rules, and
18 we're in agreement with a lot of defendants to truncate
19 service through email means, having it before service of
20 process expires could be -- could result in a waste of
21 resources.

22 So I would submit, Your Honor, if you're not
23 going to require a notice of appearance, some sort of
24 triggering event, that the time should be greater than
25 90 days. I would submit if Your Honor is going to do it

1 based upon filing, it should be no less than 120 days from
2 the date of filing.

3 **THE COURT:** You already said 98 days for
4 existing. Why don't -- I don't understand. Someone's
5 coming in. I looked at the questions. They're not that
6 hard.

7 **MR. LONDON:** Your Honor, for individual
8 plaintiffs, perhaps. But for Government entities, and
9 sometimes there are statute of limitations at play where
10 somebody has to get a complaint on file and they do not
11 have every -- every question --

12 **THE COURT:** But you've got three months to do
13 it, 98 days. Come on. I mean, y'all are making this too
14 hard. Y'all are never going to get this done if y'all are
15 sitting there fighting over this. I'm really, you know --

16 **MR. LONDON:** Your Honor, I'm not trying to fight
17 over it at all.

18 **THE COURT:** No, you just said something which
19 makes a little more sense which is -- the water districts
20 may be a little -- and the state governmental responses
21 may be a little more involved than the individual, okay?
22 Is 98 days sufficient for all of those, for those already
23 in the case?

24 **MR. LONDON:** 98 days is -- is -- we've accepted
25 that date for all --

1 **THE COURT:** Okay. I'm going to make it real
2 easy. 98 days for everybody. When they come in, they've
3 got 98 days. That's it. I don't want to argue about it
4 anymore, Mr. London.

5 **MR. LONDON:** I'm not going to argue with Your
6 Honor either.

7 **THE COURT:** Okay. You'll be -- one day you'll
8 be glad to get it over with.

9 **MR. NAPOLI:** If I may?

10 **THE COURT:** Yes, sir.

11 **MR. NAPOLI:** It doesn't seem like a good
12 inflection point to me to -- to speak, but I'm going to
13 try to sort of tell an issue. In Colorado, we were under
14 a statute with the defendants. A little gamesmanship was
15 going on between the sides as to whether or not a personal
16 injury case had to be filed or a medical monitoring case
17 had to be filed within two years of when they knew or
18 should have known there was an issue.

19 **THE COURT:** I've got you.

20 **MR. NAPOLI:** And so now we had a class action
21 and 8,000 cases filed. The defendants approached us and
22 said we want to do this in a logical fashion. We want to
23 deal with the class which is going to resolve most of the
24 issues. And Judge Jackson wrestled with this issue as
25 well. And so what was agreed upon between the parties, of

1 Mr. Petrosinelli's predecessor and other people that are
2 here in the courtroom -- but the lawyers changed at one
3 time -- was a stipulation to not serve those complaints.
4 They were never served --

5 **THE COURT:** But they had -- I suggested in the
6 first meeting that they consider tolling, okay, the
7 individual cases. Because I feared we'll one day get
8 150,000 individual cases.

9 **MR. NAPOLI:** That's right. So we signed, the
10 parties --

11 **THE COURT:** Well, if y'all want to do that,
12 that's another issue. It's not being done now. And if --
13 I'm not the one -- this is the defendant's prerogative. I
14 can't control this. I cannot impose -- and believe me, if
15 I could, I would. Okay? But I can't. So if they don't
16 want that, one day they're going to have to live with
17 150,000 cases. And they'll probably regret they didn't
18 agree to it. I think they should.

19 But what the point is at this moment, there's no
20 staying. I'm -- I'm not going to let them do discovery
21 beyond the plaintiff fact sheets. They're not going to
22 sit there and start taking the depositions of individual
23 plaintiffs at this point. I'm going to hold that off.
24 We're going to put that down. We're going to do general
25 liability and general causation first. But I want to give

1 them the opportunity, and it'll be -- you'll be -- it'll
2 be a favor to you for people who are bogus plaintiffs. I
3 had -- about 20 percent of our Lipitor people had no claim
4 whatsoever. And we got them out and it was a benefit to
5 everybody. I want to use the plaintiff fact sheets for
6 that. And I want the -- I want the defendants to have
7 some assessment of what they're facing.

8 You know, it does not take a genius to figure
9 out that if certain motions don't go their way, the
10 defendants are in an existential threat to their survival.
11 And that probably promotes some thoughtful resolution of
12 the case. Well, give them the factual foundation to be
13 able to assess their liability.

14 **MR. NAPOLI:** So there are thousands of cases.
15 They're going to get -- they're going to get that
16 information. We signed the tolling agreement on those --

17 **THE COURT:** But you don't have it in this case.
18 You know, I'm getting y'all together once a month. Y'all
19 had -- y'all were -- y'all were within six feet of each
20 other last night. Y'all could have pulled aside and
21 talked about this. Okay? I can't make them do a tolling
22 agreement. I think they should. I'm telling them, you
23 should do that. Okay? I think it'll be in your
24 interests. I don't think you're giving anything up. But
25 if you don't, I can't make them do it.

1 **MR. NAPOLI:** So, Your Honor, the point is, me,
2 myself, and Mr. Petrosinelli have discussed it. We have a
3 signed tolling agreement. All the defendants have signed
4 a tolling agreement, so --

5 **THE COURT:** I have not seen that.

6 **MR. NAPOLI:** Well, if -- if I may approach, I
7 can give it to your court clerk.

8 **THE COURT:** Mr. Petrosinelli, do you want to
9 tell me the nature of your tolling agreement?

10 **MR. PETROSINELLI:** No, there's no tolling
11 agreement. There was an agreement not up on -- related to
12 service of the complaints --

13 **THE COURT:** Yeah, I mean, this is -- this is --

14 **MR. NAPOLI:** And that was -- as Mr. Napoli said,
15 it was my predecessor. And back to Your Honor's earlier
16 comments, that's when it was one case. We have an MDL
17 now. It's a totally different --

18 **THE COURT:** Yeah, I mean, it's a -- let me tell
19 you something. I think the potential individual claims
20 could be a nightmare for everyone. We're not going to do
21 discovery on them now. We're going to get these other
22 issues out first. And I think it would be prudent for
23 everybody to agree to a tolling agreement. In the absence
24 of one, I'm going to give them the plaintiff fact sheets
25 because I'm going to treat it as if there's no tolling of

1 the claims.

2 But I can control discovery. And I -- and I'm
3 going -- what I'm avoiding for y'all is the nightmare of
4 having some team of your -- of these lawyers on your --
5 who are the plaintiffs lawyers, here they are running
6 around the country sitting in people's living rooms while
7 their depositions are being taken. I mean, I'm trying to
8 avoid that because I think it's way ahead of where we need
9 to be in this litigation.

10 MR. NAPOLI: So, Your Honor, I think this goes
11 then to Mr. London's point. So the -- I disagree with
12 Mr. Petrosinelli. We haven't figured out the appropriate
13 time to bring this up to you. I will exchange the tolling
14 agreement that was signed --

15 THE COURT: I don't want to -- I'm not going to
16 see anything until you guys work it out. I can't make --

17 MR. NAPOLI: Well --

18 THE COURT: -- I can't make the defendants do
19 it.

20 MR. NAPOLI: So then -- so fair enough. So with
21 regard to service, so these cases have not been served.
22 Now, this is just one group of cases. I think the
23 triggering event needs to be service. While you may file
24 something to toll --

25 THE COURT: Do you want me to order you to serve

1 it by next week? I mean, I'm just trying to get the
2 process moving. I think y'all are creating obstacles to
3 progress. What we don't want are the motions to dismiss
4 filed. And then we're briefing all these issues before
5 we're ready to deal with them. I think y'all -- I think
6 y'all have got the sequence out of order here. I think
7 you -- y'all think I don't. But the difference is I'm the
8 judge and y'all are not. Okay? So we're going to do it
9 my way.

10 So 98 days -- I'll enter an order, 98 days from
11 today for the ones who are parties. 98 days new people
12 coming in. If anybody's having problems, let me know.
13 Okay? How about that?

14 MR. LONDON: Your Honor?

15 THE COURT: Yes?

16 MR. LONDON: I was going to answer the question
17 about how we came up with these biblical dates --

18 THE COURT: Yeah.

19 MR. LONDON: -- of the 98 and 63 days. It was
20 the defendant's idea and I think it was a good one.

21 THE COURT: Yeah.

22 MR. LONDON: They're all divisible by seven.

23 THE COURT: Okay. That's good.

24 MR. LONDON: Which is when we don't run into
25 weekend problems.

1 **THE COURT:** That sounds very biblical, by the
2 way.

3 **MR. LONDON:** Even more biblical.

4 **MR. PETROSINELLI:** We're going to rest on the
5 seventh day.

6 **THE COURT:** Yes. Y'all have not allowed me to
7 rest.

8 There was this issue about -- was -- you know, I
9 was trying to get the -- since we were delaying the
10 answers, I didn't want the defendants to be out there
11 hiding some defense the plaintiffs had not anticipated. I
12 have trouble imagining that could actually happen, but I
13 think it's possible. And to eliminate that possibility
14 with y'all, everybody goes off and does discovery. And
15 they don't do discovery on some issue that no one knew was
16 really an issue.

17 I -- I said I want the defendants to go ahead
18 and list their affirmative defenses. They gave you 37.
19 That's got to be a world record, okay? But you got them.
20 And that was the purpose. And then there has been this
21 suggestion that they won't -- the defendants are going to
22 have to file a fact -- a defense fact sheet for each
23 individual plaintiff as opposed to general fact sheets
24 that go to their knowledge. Why -- why do they have to
25 file it for individual -- individual -- a plaintiff -- in

1 response to every plaintiff case? Why? Why would that
2 be?

3 **MR. LONDON:** Well, Your Honor, the purpose of
4 that, again, and I -- and I -- I think I understand
5 where -- where the Court is leaning right now, and
6 particularly -- again, we were building the defense fact
7 sheet structure being responsive to --

8 **THE COURT:** I -- I understand that.

9 **MR. LONDON:** -- to a plaintiff. Actually, now,
10 it's -- the defense fact sheet is seemingly responsive to
11 the sites at issue, which the plaintiffs will identify in
12 a week. Plaintiffs will endeavor to supplement that list
13 as new cases are filed and new sites are identified in the
14 coming weeks. Defendants then, seemingly, will, within
15 98 days, provide new defense fact sheets.

16 **THE COURT:** Let's hold on, let me say this.
17 Fact -- the fact sheets have a limited utility. There's
18 something called requests to produce, interrogatories,
19 that are far more dynamic in my view about how you do
20 this. They're similar but they're more dynamic.

21 And to the extent a specific plaintiff has a
22 specific need for information regarding a particular
23 defendant, all you have to do is just stick it in an
24 interrogatory. As to defendant Mr. Smith living in
25 Colorado Springs, please provide the following specific

1 information. That's what discovery is all about. That's
2 why I'm not going to limit it to some artificial number
3 because it may be your case-specific information that you
4 need.

5 And, you know, you don't like what I'm doing
6 here. You're going to like what I do about deposition --
7 about interrogatories and requests to produce. I'm
8 trying -- all I'm trying to do is get the mechanism going
9 where you get the information you need and we don't try to
10 crush the defendants in the process of doing that.

11 **MR. LONDON:** And that approach, Your Honor,
12 that -- that you just set forth, that -- that's
13 acceptable. And that -- the paradigm is a little bit
14 different, but we can go back and refigure this --

15 **THE COURT:** Thank you.

16 **MR. LONDON:** -- and fix it. That's acceptable.

17 **THE COURT:** Okay. Let me go through the
18 disputes over the plaintiff fact sheets and the defense
19 fact sheets. Let me -- let me go through this. Okay?

20 Okay. Who -- I'm looking now at the plaintiff
21 fact sheets. Let me see if I can -- actually, I'm looking
22 at the Case Management Order. Y'all are color coding
23 these things, which were very helpful. But the copy that
24 came to me did not -- was not color-coded. So I was
25 having to figure out is that a plaintiff objection or a

1 defense objection? It was -- but my law clerk finally --
2 Yoni finally coughed up the color copy to me. You know,
3 it took a while. He was hiding it in his office for some
4 reason. But he finally -- he was testing me.

5 Okay. So let's just go through -- I'm at
6 Paragraph -- I'm trying to go through each objection here.
7 At Paragraph 5, there's -- okay, you know, the yellow is
8 for -- is for the defense and the blue is for the
9 plaintiffs. Tell me what the dispute here -- who wants to
10 tell me what's really the dispute at Paragraph 5? Where
11 are we having disagreement?

12 **MR. LONDON:** Your Honor, I think you've given
13 quite a bit of guidance to this. What the PEC really
14 wanted to be sure is that we would not be embarking in
15 further discovery at this time. We're not -- we're not
16 opening the door to negotiate these fact sheets in lieu of
17 interrogatories to follow and depositions to follow. And
18 that at such time as these cases are moved to an advance
19 track, bellwether practice, early settlement evaluation,
20 whatever, at that time those selected cases will go down
21 this enhanced discovery track.

22 **THE COURT:** Yes. Now, let me say this. At some
23 point if the -- if the defendants tell me they want to do
24 broad discovery on the plaintiffs, even those that might
25 not be bellwether, I'll hear them out. I'm not trying to

1 limit that right now. What I'm just saying is, I'm not
2 making a decision on that. What I'm making a decision on
3 is in the effort to manage discovery in a way that makes
4 sense for everybody. I'm just saying individual causation
5 ought to be something we do down the road. And that's
6 also all the sort of medical-related issues regarding
7 individual causation and all that.

8 And I'm talking about individual cases because
9 the water districts are a different analysis. I just kind
10 of put all of that off because I think it's largely a
11 distraction right now. We'll get to it. And it'll be --
12 it -- it'll be demanding if we get to it. And -- but I'm
13 trying to put it off.

14 So I think -- can y'all work out the language
15 now understanding my view on Paragraph 5? Is that
16 something we can work out?

17 **MR. RING:** Yes, Your Honor.

18 **THE COURT:** Good. What we're going to do is I'm
19 going to have an order that in ten days y'all are going to
20 give me a revised CM0. And on any issues still in
21 dispute, I'll rule then thereafter. Okay?

22 And then on -- going on Page 3, end of
23 Paragraph 5, again, there's this language, No additional
24 case-specific discovery. You know, we're -- we're not
25 doing that. We're going to proceed with -- we're

1 proceeding with -- I don't know if you want to say
2 case-specific discovery. We're certainly proceeding
3 with -- with general causation discovery. And it will be
4 site-specific to gather that information. Do you need any
5 more guidance as to that highlighted yellow area on
6 Page 3?

7 **MR. LONDON:** No. I think the PEC's position
8 and, I think, consistent with what Your Honor said, this
9 language is going to come out. If an individual -- the
10 plaintiffs will receive defense fact sheets that are
11 site-specific. And as Your Honor indicated a few minutes
12 ago, if a plaintiff has -- a specific plaintiff has a
13 question, they can serve it by interrogatory.

14 **THE COURT:** That's the way you do it.

15 **MR. LONDON:** Thank you.

16 **THE COURT:** Okay.

17 **MS. KNAUER:** Your Honor, may I speak?

18 **THE COURT:** Yes, ma'am.

19 **MS. KNAUER:** Elizabeth Knauer. I'm the liaison
20 counsel for the non-manufacturing defendants. I think we
21 would like some additional guidance on what the parameters
22 would be -- our group, we have not been served master
23 discovery requests because we aren't -- you know, it
24 really isn't relevant to us in terms of the nature of the
25 questions on those. So we are tied to specific sites.

1 And our -- our position is that if we aren't undertaking
2 discovery of the individual plaintiffs related to those
3 sites, then there's sort of an equity factor as well as
4 just a practicality of us needing to engage in full-scale
5 document collection on those sites before the more general
6 causation issues related to AFFF are --

7 **THE COURT:** Well, explain to me more
8 specifically what you're talking about. What are you
9 seeking that you would not -- because the parties have to
10 produce -- the discovery they're getting, you'll get.
11 Okay? You will get that discovery.

12 **MS. KNAUER:** Right, understood.

13 **THE COURT:** What else -- what else do you need?

14 **MS. KNAUER:** Well, I don't -- I don't think that
15 there has been discovery requests propounded related to
16 specific sites other than what products were delivered to
17 those sites.

18 **THE COURT:** I would imagine they want to know
19 any measurements of water quality at those sites.

20 **MS. KNAUER:** But you can ask them this if they
21 are part of the fact sheet.

22 **THE COURT:** Right.

23 **MS. KNAUER:** So all we are -- all -- all we are
24 saying is that we will provide the information that the
25 fact sheet requests as the plaintiffs are providing the --

1 **THE COURT:** Yes.

2 **MS. KNAUER:** -- sort of limited information
3 requested in the plaintiff fact sheets. And that -- that
4 the -- and sort of in a -- a parallel construct, that
5 further discovery on those site-specific issues of the --
6 of the defendants related only to sites should be
7 forestalled as it is for the plaintiffs and under order of
8 the Court.

9 **THE COURT:** I'm somehow missing what you don't
10 want to happen. What specifically are you concerned
11 about?

12 **MS. KNAUER:** That while the general discovery is
13 occurring on the sort of government contractor defense
14 issues, et cetera, that we are being sort of inundated
15 with discovery requests requiring us to engage in a
16 large-scale document collection that isn't relevant to the
17 issues that are really --

18 **THE COURT:** I think they're really -- I think
19 they are relevant. That's the problem. I think they are
20 relevant to issues -- we're trying to do -- see, you -- we
21 can't say we're doing just governmental contractor
22 immunity because there are fact -- there are issues that
23 are core to the plaintiff's claims as well. It's the same
24 factual issues. So we're not limiting to that. If -- if
25 you -- you've got to understand, with an MDL, that the

1 normal liberty of control that you have as a single party
2 in your case, or one of just a few parties, ends up having
3 to give way, at times, timing in particular to when
4 something happens. And that's just the nature of the MDL.

5 And there are tremendous advantages to an MDL.
6 And, frankly, there are some disadvantages. But I haven't
7 heard anything specifically that you need -- what do you
8 need that you feel like you won't be getting right now?

9 MS. KNAUER: Well --

10 THE COURT: Give me an example. I just don't
11 understand it.

12 MS. KNAUER: What do we need that we won't be
13 getting?

14 THE COURT: Yes.

15 MS. KNAUER: Well, I mean, I just -- I didn't --
16 I don't -- I guess I can give a particular example for --
17 for our client, the Port Authority, which is a defendant
18 to the City of Newburgh cases --

19 THE COURT: Yes.

20 MS. KNAUER: -- brought by the City of Newburgh
21 as the water provider. If the discovery of that
22 plaintiff, as the water provider, is limited to the
23 plaintiff fact sheets, they really have most of the
24 information concerning their claims in terms of --

25 THE COURT: Well, what additional -- what

1 additional do you want?

2 MS. KNAUER: Well, I -- if I -- I just feel that
3 if they are -- if they are able to engage in full-scale
4 discovery of us, the defendant, that we should have the
5 equal ability --

6 THE COURT: Well, what do you want from them?

7 MS. KNAUER: Information about the actions that
8 they have taken, their -- their damages, their costs, et
9 cetera.

10 THE COURT: I intend to have -- I've said
11 earlier, I think one of the early issues -- it's not going
12 to be the first issue -- is going to be the water district
13 claims. Okay? I think that's an early issue that we --
14 that's an early set of issues we need to address. And
15 those very issues need to be explored. And I made the
16 point, I think, and maybe it was either the last or the
17 prior -- one of the prior status conferences, that I
18 thought the water district cases were in some ways like
19 the canary in the coal mine. If the plaintiffs can't win
20 the sort of general causation arguments there, they don't
21 have to prove individual customers are injured. So
22 they -- if they can't win their case -- they can't prove
23 their case, the water districts, then basically, the --
24 the plaintiffs are in big trouble.

25 On the other hand, simply because the water

1 districts might be able to prove their claim, doesn't mean
2 the individual claims can win. So my -- in my head, one
3 of the -- once we get through the -- I think there's going
4 to be a tremendously demanding effort to figure out this
5 government contractor immunity and the overlapping issues
6 that go -- what people knew, and when they knew it, and
7 how was the product developed.

8 The next phase is going to be the water
9 districts. And you're just going to have to accept that
10 in a Multidistrict Litigation, you don't get to -- you
11 know, one party doesn't get to set the schedule for
12 everybody else. Because otherwise we just have chaos. We
13 can't do it all at one time.

14 And I understand the government contractor
15 immunity seems like really irrelevant to you. I get that.
16 I do. I get that completely. But you're going to have to
17 be patient because there are going to be issues when we go
18 to the water districts that people who aren't water
19 districts will say, why are we spending all this time with
20 the water districts?

21 You've just got -- you've just got to do it.
22 You've got to have some rational plan for this. You can't
23 do it all at one time. I'm not turning you loose as a
24 loose cannon to go after the water -- your water district.
25 It's just not the way we're going to order discovery.

1 **MS. KNAUER:** If I may, Your Honor? I -- I -- we
2 do not have an issue with being patient. I -- I think our
3 request is more that we would request that the plaintiffs
4 be patient with respect to --

5 **THE COURT:** No, I -- I've -- listen, I've ruled
6 on this. We're proceeding. Okay?

7 **MS. KNAUER:** Thank you, Your Honor.

8 **THE COURT:** Okay. Page 10.

9 **MR. PETROSINELLI:** I think, Your Honor, you
10 decided that one.

11 **THE COURT:** Okay.

12 **MR. LONDON:** This is decided. 98 days --

13 **THE COURT:** Okay. Thank you.

14 **MR. LONDON:** -- after filing or transfer.

15 **THE COURT:** Paragraph 25 on Page 11, I think
16 that's just a fill in?

17 **MR. LONDON:** Yes.

18 **THE COURT:** Okay. This vendor thing. Tell
19 me -- I've never had anybody fighting over the vendor.
20 What's that about? I'm somehow missing that one.

21 **MR. PETROSINELLI:** Your Honor, I can, if you'll
22 permit me, I'll start. This is just a question for you,
23 really honestly, which is that in MDLs, at least that I've
24 been involved in, the parties use a vendor to create
25 essentially a database that can run reports for the Court

1 and the parties. So for example, if in six months you
2 wanted to say how many water district cases are there
3 where they've done testing and had over 70 parts per
4 trillion, you can push a button and get it.

5 **THE COURT:** And why do the plaintiffs not want
6 to do that?

7 **MR. LONDON:** Your Honor, that's -- we -- the
8 plaintiffs have no problem with the defendants utilizing a
9 management system. We intend to utilize one on our end.

10 We just simply do not believe that the
11 defendants -- the defendants -- the question that we've
12 not been able to get an answer for, too, that we thought
13 was decided is they want us to pay for this data
14 management. We, too, are using data management to see --
15 and will provide reports to this Court when we finally
16 start getting their documents -- how many are instructive,
17 how many are duplicates, how many are redacted, how many
18 are illegible, how many are this, how many are that. And
19 we're going to share it with Your Honor.

20 And then we're going to look back and we're
21 going to meet and confer over it. And it's helpful for
22 the Court. We think this, too, is helpful. We just don't
23 think, and we still don't have an answer, if we're
24 supposed to pay for it.

25 This issue has -- was thought about as an

1 afterthought by the defendants on the 11th hour. We, too,
2 have used the vendors before. There are some great
3 vendors. There are some that in our experience have been
4 a disaster to MDLs.

5 **THE COURT:** Okay. Let -- let me, let me make
6 this easy. I don't care. Okay? Y'all can't work it out.
7 I'm not going to impose a requirement on a vendor. Okay?
8 Makes -- sounds like it makes some sense to use a common
9 vendor. If y'all have one that y'all have confidence in,
10 but that's y'all's call, not the Court's. Okay?

11 Okay. 30 looks like the issue we've been
12 talking about, the 98 days, and all that. Are we okay?

13 **MR. LONDON:** That's covered.

14 **THE COURT:** Okay.

15 I'm now going into the questionnaires. And I'm
16 in the -- I guess it's the personal injury questionnaire.
17 Does that look like what that is? Yeah, personal injury
18 fact sheet.

19 And No. 14, let me talk to you about this direct
20 communication thing. Fair question. I don't think it
21 fits in the fact sheet. I think it's an interrogatory. I
22 just think that's where it is. And if you ask 3M, Give me
23 every communication, if you're doing the reciprocal, I
24 mean, come on. Okay? I mean, I just think an
25 interrogatory to that effect, followed by supplemental

1 responses, is -- the defendant is going to learn more
2 about these communications. I think that's the way to go.

3 So I just -- I don't know, I -- I think the
4 question, these communication questions are entirely
5 proper. They're just not -- don't need to be in the fact
6 sheet. Okay? So let's just take No. 16 out, propound it
7 as a -- defendant's can propound it as an interrogatory to
8 plaintiffs if you want to know that information.

9 **MR. LONDON:** Your Honor, to short circuit it,
10 that was -- that question appeared in all the
11 plaintiffs --

12 **THE COURT:** All --

13 **MR. LONDON:** -- that's the open issue in the
14 plaintiff's actions.

15 **THE COURT:** Yeah. In all the -- I agree, we'll
16 just -- we'll short circuit all those.

17 And then in the defense fact sheet, it had it in
18 there. And I just -- I just sort of feel like it's more
19 appropriate as an interrogatory.

20 Okay. The defendant fact sheet. What's this
21 introductory paragraph dispute? What's that? I've never
22 had y'all -- anybody fight over the introductory
23 paragraph.

24 Mr. Ring?

25 **MR. RING:** I think, Your Honor, you've -- you've

1 resolved it.

2 THE COURT: Good. Okay.

3 MR. RING: It's a -- it's a debate over how to
4 define sites, essentially.

5 THE COURT: Okay. Okay. Good.

6 Paragraph 3 is the same thing?

7 MR. LONDON: I think, Your Honor, it's -- it's a
8 bit -- Paragraph -- it is the same as Paragraph 3, but
9 it -- it is -- I think, Your Honor, I just want it for
10 clarification purposes because we are going to meet and
11 confer over this. I think Your Honor has adopted, in most
12 part, the definition of site as set forth -- as alleged in
13 the complaint, as identified in the complaint.

14 THE COURT: I think that's right. I think --

15 MR. LONDON: And I'm just concerned the
16 defendants here have defined site two ways, as either a
17 military institution -- excuse me, three ways, an airport,
18 a military base, or an industrial location, or -- and as
19 alleged in the complaint, I -- you know, we appreciate and
20 may disagree respectfully with Your Honor's decision.

21 THE COURT: I want the broader definition.

22 MR. LONDON: It should be alleged in the
23 complaint, not one of these three entities because there
24 are other entities. There are training facilities, there
25 are fire houses, there are fire --

1 **THE COURT:** I want any -- you know, what I don't
2 want to do is quarreling about this. I want -- you know,
3 I know there are firefighter training facilities, there
4 are airports -- I want the site -- I want it to be a
5 robust list --

6 **MR. LONDON:** Right.

7 **THE COURT:** -- and I don't want the defendants
8 constantly having to go back if they don't have to. It
9 won't be a complete list.

10 **MR. LONDON:** Right.

11 **THE COURT:** But I want it -- we're not trying to
12 artificially limit this right now. I'm just trying to get
13 past this. So whatever -- I mean, I'm guessing and I
14 don't know this for sure, that a number of our -- when
15 we're trying to figure out what product went to what
16 sites, we're going to find that it went to some Department
17 of Defense or some military branch's warehouse, right?
18 And it stops. We don't know. We have got to then go to
19 the Government and see, hopefully, now you're going back
20 many years. You're -- you're trying to figure out where
21 did -- actually that product was delivered and who has it.

22 It may well be in the end of all this, the
23 parties may end up wanting to stipulate about percentages
24 of allocation of responsibility just because it's
25 roughly -- you know, but that's y'all's call. If you want

1 to prove it, that's another way to do it. It may well be
2 once you get enough information by sampling, you may just
3 want to say why don't we just stipulate that for these
4 sites, you know, a certain of these various defendants
5 have this responsibility. It's up to y'all.

6 MR. RING: I think between Mr. London and I, we
7 can work it out --

8 THE COURT: Good.

9 MR. RING: -- with using the lists --

10 THE COURT: Good.

11 MR. RING: -- an improved --

12 THE COURT: And again, if we have problems,
13 you've got -- you've got access to me once a month, right?
14 You can -- and if we make a decision that's not working,
15 y'all need to let me know that. Okay? Just --

16 Question 14, this is, you know, to me the
17 central purpose of the whole fact sheet. I know the
18 defense objects to it. Tough. This is what we need. If
19 there's a better way to do it, I'm open to it. But I
20 think this is what -- this is what we need, the major
21 purpose of the fact sheet.

22 MR. RING: If I can, briefly, Your Honor?

23 THE COURT: Yeah.

24 MR. RING: Questions 7 and 10 in the defense
25 fact sheet actually do cover product sales. And the

1 earlier questions also cover identifying distributors,
2 sales agents, and the like. 7 deals with it from the
3 perspective of the manufacturing defendants. 10 deals
4 with it from the perspective of a site owner or operator.
5 And I would add that there are product identification
6 questions in the master discovery that has been served.
7 And so, one of our issues was 14 seems to overlap with
8 ones where all --

9 **THE COURT:** Y'all talk to each other. And if
10 it's duplicative -- I don't want duplication. You can
11 afford it, but I want it comprehensive. And if you
12 need -- refine one of the other ones. We don't -- let's
13 not have duplication. But we need to have a comprehensive
14 response, as much as the defendants can give it to the --
15 this question.

16 **MR. LONDON:** Well, we tried, Your Honor. I --
17 this -- Question 7 does not apply to the manufacturing
18 defendants as he indicated --

19 **THE COURT:** Yeah.

20 **MR. LONDON:** -- so that's not applicable. And
21 Question 10 does not get to these quest -- these issues
22 here. And we -- we reframed this. This is the language
23 that defendants agreed to.

24 **THE COURT:** I -- I -- it looks --

25 **MR. LONDON:** We think it needs to be there.

1 **THE COURT:** -- perfectly reasonable to me,
2 frankly, folks. I -- I really -- I've got to tell you, as
3 you'll -- I will confess that there will be difficulties
4 on some of these that I just won't appreciate until
5 somebody tells me there's a problem. But it looks
6 reasonable to me. Let's work that out. Okay?

7 And Questions 15 through -- through 20 are
8 perfectly appropriate. But they ought to be
9 interrogatories and not plaintiff fact sheets. That's
10 just my view of it. It's just -- that's a better sort --
11 that's a better place to put it with all these
12 communications. Obviously, an -- a potentially important
13 issue in the case.

14 Okay. So it sounds like we -- you're going to
15 let me know within ten days whether we have -- you're
16 going to deliver to me a plaintiff fact sheet. Or, if
17 there's any dispute, a color-coded extra copy for the
18 Judge so Yoni can't hide it, and put Judge on that, you
19 know, and I'll rule promptly on that. Okay?

20 Let's talk about limiting interrogatories,
21 requests to produce. A scheduling order -- you know, a
22 normal case, out of the chute we send -- we serve a --
23 answer comes in, we serve a scheduling order. You've got
24 90 days to do this. You've got to have post-trial
25 motions, et cetera.

1 That doesn't really fit here. It just doesn't
2 fit. That's -- you know, we're going to have
3 19 scheduling orders? It doesn't make any sense right
4 now. However, if my -- if -- if we're not making
5 progress, I'll start ordering things. Okay? I'm -- I'm
6 kind of leaving it to y'all right now.

7 We've got the -- we've got the discovery
8 requests going out. If the -- I presume from them there
9 may be requests for 30(b)(6)'s, et cetera. Y'all got a
10 problem, you let me know. Try to work it out among
11 yourselves. But putting you on a time clock right now,
12 when we don't even know what's out there, it just doesn't
13 make a lot of sense to me.

14 I want you working hard. I was accused in
15 Lipitor of putting the parties on the Bataan Death March,
16 okay? And, you know, they weren't making enough progress
17 initially, and I finally put the hammer down. You had to
18 do it all by a certain day. Everybody did it. It got
19 done. But right this moment, I'm not going to do that.
20 And I'm not going to limit artificially the number of
21 requests to produce or interrogatories.

22 If, however, there are -- there are some of
23 those requests that seem to have marginal relevance or no
24 relevance, and a tremendous burden on the defendants to
25 produce it, file your motion for protective order or your

1 objections to it. I will address it after y'all confer,
2 and hopefully y'all can work them out. But I think I've
3 made it clear, I think there needs to be robust discovery
4 in this case. And in the end, everybody won't like what I
5 do. But there it is. They say in this business if you
6 want a friend get a dog, right?

7 Okay. So I'm -- the requests to limit, I
8 don't -- I'm not going to limit it. And the party -- the
9 plaintiffs are free to propound the first set of discovery
10 requests if they choose to do so.

11 I addressed briefly before the issue of -- I
12 guess I did actually regarding the fact sheets. I've
13 asked the defendants to list the defenses. They do not
14 need to list that for every plaintiff. Now, eventually,
15 when they answer, they will have -- of course, we'll work
16 out how we're going to do a group answer, individual
17 answer. But right now, they don't have to make a -- I
18 think they've given -- they've done what I've asked them
19 to do, which is to put you on notice of what the potential
20 defenses are. I would have guessed y'all could have
21 gotten all 37 if you were -- but I avoided the -- this,
22 the problem. I told you.

23 Establishing a deposition protocol, what's going
24 on with that?

25 **MR. LONDON:** Your Honor, just on the responsive

1 pleading issue --

2 THE COURT: Yeah.

3 MR. LONDON: -- and we understood the Court's --

4 THE COURT: Yeah.

5 MR. LONDON: We're not going to reargue that
6 because that had --

7 THE COURT: Yes.

8 MR. LONDON: -- other implications.

9 THE COURT: Thank you.

10 MR. LONDON: We did receive -- and I think this
11 is important to note -- that we received the responses
12 from two defendants. And the report indicates that the
13 other defendants may respond by, I think it's August 30th.
14 We just -- we do want to -- if that's the date, great. We
15 just want to make sure that that is --

16 THE COURT: August 30 is the date.

17 MR. LONDON: Okay. Thank you, Your Honor.

18 THE COURT: And the two who have already
19 answered -- who have already provided the information, if
20 you'll send it digitally, the other sides can just cut and
21 paste. Okay? They don't really need until August 30.
22 Okay? If you didn't come up with one of the defenses, it
23 would be a surprise. Okay?

24 MR. THOMPSON: I think they get a bonus if they
25 come up with additional --

1 THE COURT: Yeah, anymore, right?

2 MS. KNAUER: Your Honor, may I ask for
3 clarification?

4 THE COURT: Yes.

5 MS. KNAUER: I just want to make sure that
6 submitting the statement of affirmative defenses would not
7 preclude a party from seeking to file a Rule 12 motion.

8 THE COURT: Will not. Absolutely not.

9 MS. KNAUER: Thank you, Your Honor.

10 THE COURT: And I anticipate at some point we
11 will get to that, because we're going to have immunity
12 issues that I presume will come before the Court in other
13 motions. You see, the problem -- we have immunity issues.
14 You've got a -- they -- they often raise factual issues.
15 It's not purely legal questions. And -- and I have --
16 Courts always -- I have -- parties always can -- oh, we
17 want to do discovery just on that issue. Well, it's,
18 like, terribly inefficient. You could do the whole
19 discovery on the case while you're doing discovery on the
20 one jurisdictional issue. So we always try to balance
21 that.

22 Yes, ma'am, from the Department of Justice?
23 Yes?

24 MS. FALK: Your Honor, because we're raising
25 jurisdictional issues, I -- any -- in the current

1 statement we identify two very global jurisdictional
2 issues.

3 THE COURT: I saw that. Yes, ma'am.

4 MS. FALK: We have other issues where you styled
5 them as affirmative defenses, we consider this just
6 jurisdictional issues. Do you want the United States to
7 list all the additional --

8 THE COURT: I wish you would, just so --

9 MS. FALK: Sure.

10 THE COURT: So to the extent there's some
11 discovery that needs to be done on any of them --

12 MS. FALK: Sure.

13 THE COURT: -- that the parties kind of are
14 aware of it. Because I'd love at some point that we kind
15 of try to address the general governmental immunity. We
16 address the governmental contractor immunity and others
17 that -- that really go foundationally to the case. I want
18 to -- I'd love to do those at a time, I -- I want to give
19 everybody a chance to go do the discovery first.

20 MS. FALK: Right. We can do that by the 30th,
21 Your Honor, that's no problem.

22 THE COURT: Good. Good. Thank you very much.
23 Deposition protocol. I understood that that
24 basically had been worked out or close to it?

25 MR. THOMPSON: Your Honor, we reported to --

1 yesterday that we are in discussion. We've submitted an
2 edited version. They've come back. And they now have it
3 under advisement. What I've advised the Court is that we
4 will either have it worked out to submit to you as a -- an
5 agreed-upon order or it will be ripe for you to put the
6 hammer down.

7 **THE COURT:** As y'all -- as y'all understand, I
8 will make a decision. So when we --

9 **MR. THOMPSON:** Now, there is a fascinating
10 aspect, and that is the United States has forwarded a
11 position which is that they believe the Federal Rules of
12 Civil Procedure should govern the conduct of the
13 depositions and not a negotiated protocol. So that's --

14 **THE COURT:** Well, I -- I largely agree with them
15 actually. I -- you know, I --

16 **MR. THOMPSON:** I seem to remember --

17 **THE COURT:** I, frankly, find the whole protocol
18 thing -- if y'all want to do it, fine. But I largely
19 agree with the United States on this. It works just fine.
20 Y'all are trying to reinvent the wheel, guys. We have all
21 these years of experience with the federal rules. It
22 works pretty well. And I'm not only available once a
23 month to y'all. You know, we have telephones in
24 Charleston. You call me, we'll -- I'll address an issue.

25 **MR. PETROSINELLI:** Your Honor, I think the

1 protocol, from our perspective, is more dealing with
2 things like, you know, you have to go through the PEC and
3 DCC. The issues --

4 **THE COURT:** Well, you know I'm big on that.
5 You know, when that -- that one motion came, I put it on
6 you to -- in the future you had -- you had to sign -- put
7 your signature on that thing to do it. I completely agree
8 with that.

9 Let me talk about medical monitoring issues for
10 a second, because I think I've caused the defendants to
11 have a heart attack over this issue.

12 The -- I was ex -- you know, the parties have
13 told me, quite passionately, they believe in their
14 positions. Great. Okay. I'm glad you do. And I was
15 going to say, okay, if everybody thinks the plaintiffs
16 think this causes tremendous harm and the defendants think
17 it's harmless, let's go test our theories. Let's pick a
18 couple sites and let's go do it. It'll be voluntary.
19 Let's go do it. Plaintiffs leapt at the opportunity and
20 the defendants said no way. Okay. Take that for what it
21 means. Okay?

22 **MR. PETROSINELLI:** That never happens.

23 **THE COURT:** Yes. I would -- and that's fine.
24 Never happens is fine. I am -- I thought it would be --
25 you know, I will tell you, there was a great debate. Some

1 of y'all have read my book. There's a -- was a great
2 debate about using the doll studies in the Brown -- in
3 the -- in Briggs vs. Elliott, which became Brown, the
4 Brown case, the use of the dolls. Nobody had ever done
5 anything like that. I guess at the -- if they had
6 answered that way, Thurgood Marshall would not have used
7 the dolls. But Marshall said he had a young assistant,
8 Robert Carter, later a District Judge in New York, some of
9 y'all from New York would have known Judge Carter, he was
10 like 30 years old. He said, you know, we've got to do
11 this new cutting edge thing. And Marshall's, you know, a
12 little skeptical but then believed and you have got to
13 prove your damages if you have a case. He said, I'll tell
14 you what, you send Clark to South Carolina. Let him do it
15 in South Carolina. Go right to the site. Don't just have
16 a theory. Go prove it in Summerton, South Carolina. And
17 he did. It was a powerful piece of evidence.

18 Now, if you go to one of -- if you go to the
19 sites and you test them and it's a -- it's a home run for
20 the plaintiffs, bad for the defendants. If it's a washout
21 for the plaintiffs, bad for the plaintiffs. Right? I
22 mean, it's not decisive either way. But it's just a piece
23 of important evidence.

24 But I can't -- it's like the whole thing with
25 the tolling. I can't make you do it. I am not going to

1 make you. I'm not going to try to make you do it at this
2 stage. At some point, medical monitoring, in those states
3 which allow it -- I think it's eleven states we looked at
4 last, I think seven of them allowed it -- might be a
5 remedy we will consider.

6 I will tell you that the -- and I'm told the C8
7 Panel stuff is worthless on one side and its, you know,
8 Nobel Prize Laureate stuff on the other, okay? I'll hear
9 more at Science Day about all that. I'm interested in it.

10 I just, you know, one observation I have is that
11 in a perfect world without statutes of limitation and the
12 race to the courthouse, we -- this lawsuit might have been
13 brought a couple years from now, with a little more of the
14 data everybody wished they had. And I've told you in the
15 midst of this we're going to get data that is going to
16 help or hurt parties. I mean it, it just will. And the
17 more information we have, the better.

18 But there are things I have the power to do and
19 there are things I -- I don't have the power to do. And
20 one of the things I don't have the power to do is make
21 y'all do a medical monitoring program, to actually -- I
22 think the defendant referred to it dismissively as an
23 epidemiological study in the midst of litigation. If the
24 plaintiffs are going to do that, they need to do it
25 themselves. I can't make the defendants do it.

1 But Mr. London, it might be something y'all can
2 do, you know. And you might well do it, but you won't do
3 it with the cooperation of the defendants. And it's
4 entirely their prerogative not to agree to that. No need
5 to file a memorandum any further on that. I got the
6 defense position. I already agreed with it, frankly,
7 before I had made those statements.

8 City of Newburgh's amended complaint. The
9 United States has some concerns about that. What's going
10 on with that? Y'all know anything about that? Anybody?
11 I'm looking at blank looks here.

12 MR. THOMPSON: Judge, this is the communication
13 I had yesterday. The -- plaintiff's counsel from the City
14 of Newburgh needs to amend, or desires to amend his
15 complaint both for -- to add an additional claim and to --

16 THE COURT: Add the United States. Don't they
17 want -- do they want --

18 MR. THOMPSON: No, no. As I understand -- well,
19 he -- he is available to speak to you.

20 THE COURT: He's standing behind you.

21 MR. THOMPSON: And I think he probably thinks
22 I'm not going to do as good a job discussing it as he.

23 THE COURT: He would have good reason to think
24 that.

25 MR. THOMPSON: Oh, that's so unfair.

1 **THE COURT:** Come on forward and tell me what the
2 issue is and let me understand.

3 **MR. KNAUF:** Your Honor, Alan Knauf for City of
4 Newburgh.

5 **THE COURT:** Yes.

6 **MR. KNAUF:** We did serve an amended -- or we did
7 file, excuse me, an amended complaint --

8 **THE COURT:** I saw that on the 23rd, yes.

9 **MR. KNAUF:** -- on Tuesday which we believe was
10 right under Rule 15 because we're still working --

11 **THE COURT:** You're probably not right about
12 that, but you're going to be able to get it done. You're
13 going -- technically, if you look at the rule -- and I
14 might be wrong about this -- but I think the rule would be
15 it's 21 days after you file or 21 days after you get a
16 responsive pleading. Okay? So you have filed now a
17 motion to amend. I would read -- I would, you filed an
18 amended complaint. I would, frankly, read it as a motion
19 to amend. Just, that's the way I would read it. If the
20 Government objects or anybody objects to it, file your
21 objection to the motion to amend. And I will rule.

22 But let me give you the short road here. The
23 short road is, it's going to be amended. And I will rule
24 it as -- once it's -- I rule it as a motion to amend and
25 you object, you know, I take that as a -- the 21 days is

1 starting to run and you have a right to amend. So you're
2 going -- you're going to be able to amend your complaint.
3 We're supposed to do it. We're -- because of the delay in
4 filing answers, this is getting a little -- you know,
5 these kind of standard practices get disrupted a little
6 bit. But you're going to be able --

7 Does anybody object to the City of Newburgh's
8 amended complaint?

9 MS. FALK: Your Honor, we're consulting with the
10 Southern District of New York, who's actually been working
11 with the plaintiffs on -- on this particular matter.

12 THE COURT: I want you in ten days to let me
13 know whether there's an objection.

14 MS. FALK: Sure.

15 THE COURT: And if there's not an objection, I'm
16 going to -- I'm going to rule it as a motion to amend
17 granted. Okay?

18 MS. FALK: Yeah.

19 MR. KNAUF: Your Honor, I did have a formal
20 motion drafted that I have in my file. Should I file it?

21 THE COURT: Go ahead and file it. I'm going to
22 backdate it to the day of your amended complaint.

23 MR. KNAUF: I don't need anybody else to sign it
24 or --

25 THE COURT: No, no. You're welcome to do that.

1 It's just your amended complaint.

2 Mr. Thompson, have you got any concerns?

3 **MR. THOMPSON:** Judge, just from the -- the
4 aspect of unexamined consequences, the CMO requires that
5 motions filed with the Court are to be filed by leaders --
6 or to be signed by leadership.

7 **THE COURT:** Okay. Here's what you're going to
8 do then. Why don't you -- I think Mr. Thompson is
9 actually right about this. I fussed with Mr. Petrosinelli
10 last time about this. You need -- anybody who wants to --
11 you know, like an amended complaint, just present it to
12 committee. If you don't have -- if they won't agree to
13 it, you present it to me at the next status conference if
14 they won't file the motion for you. This is one that they
15 would routinely -- you know, they would have no reason not
16 to agree to.

17 **MR. KNAUF:** I am against a Monday -- my deadline
18 of Monday, because of my federal tort claim.

19 **THE COURT:** Well, your mo -- you're fine. You
20 can file a motion to amend. You're -- you're within the
21 time. Don't worry about that.

22 **MR. KNAUF:** Thank you. And the other issue was
23 Ms. Williams at one of the previous conferences brought up
24 the venue.

25 **THE COURT:** Venue is not an issue. I am not

1 trying to move venue. Venue is still in New York. This
2 is just pretrial. I'm the pretrial judge. That's all
3 that there is. Venue is -- remains in New York. Under
4 Lexecon, I couldn't even try the case here if I wanted to
5 unless the parties consented.

6 MR. KNAUF: Okay. Great.

7 THE COURT: Okay.

8 MR. KNAUF: We -- normally in that -- I mean,
9 we, obviously, only filed -- we'll just come in --

10 THE COURT: Yes.

11 MR. KNAUF: -- and add them.

12 THE COURT: Right, and we don't go back. And
13 under my rule -- my CM0-1 you don't go back to the -- to
14 the original court to -- to do an amendment.

15 MS. FALK: Your Honor, maybe it will short
16 circuit this. The United States, I think, don't
17 anticipate filing anything objecting to the amended
18 complaint.

19 THE COURT: The motion to amend is granted. You
20 don't have to file anything. Okay? Done.

21 MR. KNAUF: All right. Thank you, Your Honor.

22 MR. EDLING: Your Honor?

23 THE COURT: Yes?

24 MR. EDLING: Matt Edling. And I consulted with
25 the PEC on this. Just -- I suspect there is going to be a

1 number of parties who will seek to amend before your
2 August 4th deadline. I might suggest, on motions to
3 amend, perhaps to alleviate some of the strain on Mike,
4 Scott, and Paul, if --

5 **THE COURT:** Don't worry about the strain on
6 them. They can handle it.

7 **MR. EDLING:** Well, the --

8 **THE COURT:** I put them on this because they can
9 handle this. They told me they could.

10 **MR. EDLING:** They can. But the concept of them
11 signing motions to amend seems -- as opposed to just
12 seeking -- you know, I --

13 **THE COURT:** Just submit it to them. They can
14 file one line, we consent to all of these.

15 **MR. EDLING:** Good. Thank you.

16 **THE COURT:** Okay. Thank you.

17 **MR. LONDON:** And I think Your Honor addressed
18 that. Thank you.

19 **THE COURT:** Yes. But it makes the point that
20 we're trying to have some control, support of our
21 leadership. That's really the key here because otherwise
22 we have, in my view, chaos.

23 Let me talk a moment. I -- I'm sure everyone
24 noticed that I filed a Science Day Order. Did everybody
25 see that? Surprise. And y'all notice that I -- the one

1 thing about it is I didn't do anything that any of y'all
2 wanted me to do. I did it exactly the way -- I think
3 y'all had made -- y'all were -- y'all were going to
4 spoonfeed me. And I was going to sit there. What was it
5 Judge Sirica said, I was going to sit there like a -- like
6 a fool watching the parade go by or something like that?
7 Or was it nincom -- I was going to be like a nincompoop
8 watching the parade go by?

9 I think I asked the -- under Paragraph 7, all
10 the questions, everybody's terrified what the answer is,
11 right? Because nobody really knows the answer to these,
12 is my guess. Or at least they won't admit to themselves
13 that they don't really know the answer. But these are the
14 central questions in my view of the case. And I've been
15 doing a lot of reading, and I don't know the answers to
16 these questions.

17 So I'm really interested in -- I mean, there are
18 all these different, dramatically different, numbers for
19 what is toxic to human health? What's risk to human
20 health? What's the underlying basis for these -- for
21 this, for these tremendously varied numbers?

22 And to that end, the plaintiffs put in a -- in a
23 filing with me, I can't remember what document. It was
24 recent. That -- it was the thing about medical
25 monitoring. It made the statement that the C8 Medical

1 Panel had used 50 parts per trillion. Where'd that come
2 from? Because when I read the studies I've read from the
3 medical panel, I haven't found specific numbers. Maybe
4 I'm not looking hard enough. Maybe I don't understand
5 what they're saying.

6 They talk about certain cause -- certain
7 conditions, like certain cancers, were at the highest
8 level. But they don't define what the highest level of
9 exposure is. I don't -- I haven't been able to find that.
10 And it may be that I'm just having a -- I'm not looking
11 hard enough or I'm looking fully. So where did this
12 50 parts per trillion come from? Yes?

13 **MR. LONDON:** Your Honor, it was part of the
14 class definition. And at the time, back in '04, '05, that
15 was the lowest detection number.

16 **THE COURT:** The lowest detection number in the
17 data they were --

18 **MR. LONDON:** That was -- at that time, correct.

19 **THE COURT:** Did they later get more spe --
20 more --

21 **MR. LONDON:** Oh, no, that was how the class was
22 defined. 50 parts per trillion for a year of expo -- one
23 year of drinking the water.

24 **THE COURT:** Yeah, but see, but the studies
25 indicated that from the -- I understand, I know how you

1 defined the class. What -- what was unclear to me was
2 when the medical panel was saying testicular cancer is
3 present with the highest rate of exposure; what was that
4 rate of exposure? I just don't know. And I'm trying to
5 figure out, and you have all these different groups
6 recently using 10 to 14 parts per trillion. What is the
7 data there? The EPA uses 70 parts per trillion. The
8 Department of Defense is relying on that in a lot of their
9 work. What is the basis for that? Does the CDC Panel,
10 didn't they have some low number as well? What was --
11 what was that all about? There's a New Jersey Water
12 Quality Authority that had some numbers. I just think
13 we -- this is going to end up being kind of important.

14 I think about what -- and I will say, it may be
15 particularly important on the water district cases because
16 think about this for a moment. If the water districts say
17 the defendants contaminated our product. We have this
18 product called water. And we sell our water. And it
19 contaminated our product. And you'll say, well, you have
20 25 parts per trillion. Is that's not -- is that
21 contamination or not contamination? It might well go on
22 what the science shows. Is there a reasonable basis for
23 that concern? Because -- is there a reasonable scientific
24 basis?

25 I think this is, like, a really important

1 question to sort out. And, you know, I'm going to be --
2 I'm going to be interested in hearing out the -- your
3 ex -- your respective experts on that issue about, you
4 know, is there a scientific basis for these various
5 numbers. And we've talked before about how small so many
6 parts per trillion really is. I mean, we're talking
7 about, you know, drops of -- of the -- of the product in a
8 large body of water.

9 So I -- I think it's -- it's just -- I think
10 that is a very important issue which I'll be asking -- I
11 have a lot of interest in, and which I think is very
12 important to the claims of the plaintiff and the defenses.

13 Mr. Summy, you have something to add about that?

14 **MR. SUMMY:** Yes, Your Honor. I just want to
15 comment that, you know, the questions you're asking I
16 think are right on point. They're especially important
17 for water providers. And, you know, we believe that the
18 experts, certainly on the plaintiffs' side, are going to
19 be prepared to address those and have a strong basis to,
20 you know, describe for the Court what these states are
21 doing and what the basis for these numbers are. And so we
22 look forward to that opportunity.

23 **THE COURT:** Good.

24 **MR. OLSEN:** Your Honor?

25 **THE COURT:** Yes?

1 **MR. OLSEN:** Just one question from the defense
2 perspective. We talked to the PEC last night and they're
3 contemplating it, but in looking -- and thank you, I agree
4 with Mr. Summy that -- that we agree these are important
5 questions and we'll be prepared to address them. If you
6 look at the questions that Your Honor outlined, the first
7 five categories, you have environmental remediation
8 questions. And at the top cycle, human effect questions.
9 And that, at least from the defense perspective, falls
10 into two readily-definable buckets. And we have two
11 experts can -- that can address it.

12 That last category, talking about alternative
13 products, that's at least from our perspective really a
14 separate question. And we're not looking to expand the
15 time limit at all. Two hours is perfectly fine. But from
16 the defense perspective, we were thinking that three
17 experts would be very helpful for us to address those kind
18 of three buckets where we would have a separate expert to
19 address that AFFF question in the same time limit.

20 **THE COURT:** Mr. London, what's the plaintiff's
21 view? Or Mr. Summy?

22 **MR. LONDON:** Mr. Summy is going to address this.

23 **MR. SUMMY:** Your Honor, the first I heard about
24 this was last night at the cocktail party where they were
25 talking about this. Our current plan is to have two

1 experts address this. But, you know, we have --

2 THE COURT: How about up to three? Up to three.
3 Y'all -- if y'all want three, and you hit the same time
4 limit, I don't care.

5 MR. SUMMY: Okay.

6 THE COURT: I want -- do want people to know
7 what they're talking about. Okay? I mean --

8 MR. SUMMY: Sure.

9 THE COURT: -- you know. And, you know, I've
10 said we're going to begin the process by them telling me
11 which is in their expertise.

12 I once had this case where we had two lawyers --
13 sorry, guys -- from the Department of Justice, from
14 different divisions of the Department of Justice. And it
15 was -- it covered -- it was another environmental case
16 involving a cruise ship. And one was from Natural
17 Resources and one from some other area. And I would ask
18 one of them a question, and they said, well, that's hers.
19 And then they said, No, no, that's yours. And there
20 was -- nobody would own it, you know? And I was saying,
21 Come on, guys, one of y'all, just one person needs to
22 answer my question.

23 So I do want to know who's going to answer those
24 questions. And I recognize there are areas which may be
25 outside the expertise, because I do go in different -- in

1 different areas. But, you know, I think this Science Day
2 might not only be helpful for me -- you know, that's what
3 it's really intended for, selfishly, for me. I think it
4 ought to help all of y'all to think more deeply about the
5 underlying science on -- on your respective positions.

6 Okay. Now, that is the list I had. Are there
7 additional issues that the parties need to address with
8 me?

9 MR. THOMPSON: No, Your Honor. Thank you very
10 much.

11 MR. PETROSINELLI: I have one, Your Honor.

12 THE COURT: Yes sir.

13 MR. PETROSINELLI: Just an update for you. You
14 might have seen this on the agenda. The State of New York
15 had filed a second complaint in the Northern District of
16 New York. And they tried to get that court to decide on
17 the motion to remand. I appeared in a hearing, I think it
18 was Tuesday, before the magistrate judge up there where we
19 argued that any motion to remand should be brought before
20 Your Honor.

21 THE COURT: Correct.

22 MR. PETROSINELLI: And I'm happy to report that
23 the magistrate judge granted our motion to stay that case,
24 which -- and when he did that, the State of New York then
25 withdrew their opposition to transfer the case to Your

1 Honor. So I don't know what that was all about, but all I
2 can say is I'm happy to say that that case is on its way.

3 **THE COURT:** Let -- let me just say, I understand
4 how some of the parties may feel like their issues aren't
5 being addressed like step one, theirs's may be step two or
6 three. I get that. I really do. And I'm going to -- I'm
7 going to try to stay very conscious of the interests of
8 all the parties not to unduly address -- not to address
9 one set of claims and completely ignore the interests of
10 others. But there are limitations when you have 110
11 really complicated cases.

12 And folks, tell me, do we have a lot more
13 coming? What are we hearing?

14 **MR. LONDON:** Yes.

15 **MR. PETROSINELLI:** I should say that the State
16 of New York just filed, I think yesterday, a third case in
17 that same court. I'm hoping, given what's happened, that
18 they won't oppose transfer and try to end run -- end run a
19 motion to remand, but I guess we'll see.

20 **THE COURT:** Folks, let me ask you what may just
21 be a completely ridiculous idea, but one in which I think
22 the parties would have a common interest in this. I have
23 attempted on my own to gather as much information as I
24 can. I've been reading the various Department of Defense
25 reports to congress on publicly-released reports. And I

1 have read the interests of numerous congressmen of all
2 parties, all parts of the country who have understandable
3 concern about the effects of this product may have in
4 their individual congressional districts and in and around
5 military installations.

6 I made a reference before that to the extent
7 that the plaintiff's claim have merit -- claims have
8 merit, that this could be an existential threat to the --
9 to the defendants. The -- I don't think the -- the
10 liability could be extraordinary.

11 The Government has filed motions to a certain
12 governmental immunity. I don't think anybody would argue
13 that to the extent there is culpability or responsibility
14 here, which is yet to be determined, the Government was an
15 active participant in that. There is no question about
16 that.

17 And I'm not saying anything intentional. I just
18 think in terms of who allege -- you know, who was involved
19 in the exposure of the product to servicemen and to people
20 living in and around military installations and so forth
21 or near these products where the -- where the product was
22 exposed.

23 That seems to strike me that there needs to be
24 some careful consideration of whether in -- in a reso --
25 potential resolution of this case the United States should

1 not participate. It may be -- have to be a voluntary
2 congressional act, a version of -- sort of the 9/11
3 situation, where the United States may participate in a
4 settlement fund. I -- and I would suggest as -- and
5 you've got many, many things on your plate -- that y'all
6 might in common seek to start a dialogue with congress on
7 that issue.

8 I know there are a lot of congress members of
9 the House and Senate vitally interested in this subject.
10 I see it on the internet. They're very concerned. And
11 it -- it would have to be a decision by congress to do
12 that.

13 To the extent there's governmental immunity,
14 that would -- that would be the responsibility. But it
15 has been known, of course, there are instances where the
16 Government by -- you know, we traditionally call those
17 private bills where the Government steps in and
18 contributes.

19 So I simply say to you -- to all of you that
20 that might be a source of something of common interest
21 that y'all ought to be exploring. It would not be a fast
22 process. But, you know, all across the country, news
23 reports -- I suspect the plaintiffs lawyers may have some
24 role in this -- are starting to pop up about the dangers
25 of this contamination. And that is, obviously, generating

1 a great deal of public concern and perhaps response by
2 people who are in elected positions who may be in a
3 position to play some role in what may be necessary to
4 remediate.

5 I -- you know, the Government has spent, I don't
6 know, Ms. Williams, hundreds of millions of dollars now on
7 remediation? Is that fair?

8 **MS. WILLIAMS:** Yes, Your Honor.

9 **THE COURT:** So, obviously, this is a -- this is
10 a big task. It may be bigger than anybody sitting in this
11 courtroom can han -- do themselves.

12 Anything further to come before the Court?

13 Yes, sir?

14 **MR. DESAI:** Yes, could I just respond very
15 briefly as to --

16 **THE COURT:** Come on forward.

17 **MR. DESAI:** Thank you, Your Honor.

18 **THE COURT:** Yes.

19 **MR. DESAI:** Mihir Desai from the State of New
20 York.

21 **THE COURT:** Yes. You're the one filing all the
22 lawsuits. You're starting to act -- you need to come sit
23 with the plaintiffs here. You're going to be like -- you
24 know, you're starting to act like a good plaintiff's
25 lawyer.

1 **MR. DESAI:** It is correct we had a case pending
2 in the Northern District of New York. We just -- we think
3 that case still belongs in the state court of New York
4 because there's not a basis for federal court
5 jurisdiction. There are no federal contracts at issue
6 with the sites that are -- regarding -- in that complaint.
7 But the judge there in the status conference that was
8 referred to earlier this week said that there was not time
9 adequately to address a rule on a remand motion by the
10 time the JPML ruled on the transfer motion, so therefore
11 we did withdraw.

12 **THE COURT:** Yeah. Let me tell -- let me say
13 this. In my Lipitor case, I remanded a lot of cases.

14 **MR. DESAI:** Okay.

15 **THE COURT:** I mean, we -- we -- I had a
16 magistrate judge who did nothing but handle remand cases,
17 and we had some where they didn't have complete diversity
18 and so forth. And we, you know, we remanded it. The
19 question is can you have some kind of central decision
20 making in all of this so you don't ask random judges all
21 across the country to address the very -- the identical
22 issue? So we may have other remand motions. I'm not
23 promoting remand. I think the MDL makes a lot of sense to
24 kind of getting central control and having -- keeping as
25 many people here as appropriate to be here. And, you

1 know, I'm a believer in the system. But there are
2 instances where this Court doesn't have jurisdiction.
3 And, you know, if so -- and if that's the case, so be it.

4 **MR. DESAI:** There are sites in New York where we
5 may expand our complaint, file new suits. And some of
6 that may involve military sites. And Your Honor has
7 already ruled on a remand motion with respect to that.

8 **THE COURT:** I have.

9 **MR. DESAI:** And then we certainly wouldn't
10 oppose that in the future. But there are different types
11 of sites.

12 **THE COURT:** Well, to the extent you have a --
13 you come here and you have a remand motion after the panel
14 transfers it to me, make your motion. And, you know,
15 under the leadership, you should at least -- you know, you
16 need to consult with --

17 **MR. DESAI:** Sure.

18 **THE COURT:** -- with the PEC. And if they don't
19 approve, they aren't willing to sign on, you would come
20 before me for permission to file it. And then I will -- I
21 will address whether, you know, whether -- I will tell you
22 that I would -- I will likely address a remand motion. I
23 mean, I'm -- even if the PEC doesn't agree to it, I
24 would -- I'm going, I'm going to hear out remand motions.
25 So -- and I'll address them on the merits.

1 MR. DESAI: Thank you, Your Honor.

2 THE COURT: Okay. Thank you.

3 Anything further?

4 MR. THOMPSON: Judge --

5 THE COURT: Hearing's adjourned.

6 MR. THOMPSON: -- thank you.

7 (WHEREUPON, court was adjourned at 10:33 a.m.)

8 ***

9 I certify that the foregoing is a correct transcript from
10 the record of proceedings in the above-entitled matter.

11 s/Karen E. Martin

8/4/2019

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Karen E. Martin, RMR, CRR

Date _____

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Karen E. Martin, RMR, CRR
US District Court
District of South Carolina

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